

Letter of Findings: 01-20181561; 01-20181562R
Individual Income Tax
For Tax Years 2010, 2011, 2012, and 2014

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Married couple's claims for refund for tax years 2010, 2011, and 2012 were properly denied as the claims exceeded the Statute of Limitations. Further, the proposed assessment on Married Couple's 2014 Indiana income tax return was appropriate as Married Couple could not verify withholdings claimed in their return.

ISSUES

I. Individual Income Tax - Statute of Limitations.

Authority: IC § 6-8.1-9-1; IC § 6-8.1-6-1.

Taxpayers seek a refund of Indiana individual income tax.

II. Individual Income Tax - Imposition.

Authority: IC § 6-3-2-1; IC § 6-3-3-1; IC § 6-8.1-5-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the imposition of income tax.

III. Tax Administration - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers request that the Department abate the negligence/late filing penalty.

IV. Tax Administration - Interest.

Authority: IC § 6-8.1-10-1.

Taxpayers request that the Department abate the interest.

STATEMENT OF FACTS

Taxpayers are Indiana resident husband and wife who file jointly for federal and state individual income tax returns. According to Taxpayers, in May of 2011, they had a house fire which destroyed all of their financial papers and left them displaced for several months. As a result, Taxpayers were unable to file their 2010, 2011, 2012, and 2014 Indiana income tax returns until November of 2017.

Taxpayers claimed refunds for years 2010, 2011, and 2012. The Indiana Department of Revenue ("Department") denied these refunds on the basis that the claims were filed outside of the time period allowed for under IC § 6-8.1-9-1. Taxpayers' 2014 return reported that Taxpayers owed approximately \$200 in Indiana income tax. However, in February of 2018, after reviewing Taxpayers' 2014 return, the Department issued Taxpayers a

proposed assessment increasing the tax due to approximately \$1,000. This increase was due to a reduction in total credits claimed by Taxpayers on Schedule 5 of their 2014 return.

Taxpayers filed a protest for 2010, 2011, 2012, and 2014 asking that their refunds be granted and the 2014 assessment, as well as penalties and interest, be waived. A telephonic administrative hearing was held in which Taxpayers explained their protest. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Statute of Limitations.

DISCUSSION

In November of 2017, Taxpayers filed their 2010, 2011, and 2012 Indiana income tax returns; each one of which claimed a refund. The Department denied Taxpayers as the refund claims were filed outside the three year period dictated by IC § 6-8.1-9-1.

Relevant to tax years 2010, 2011, and 2012, is IC § 6-8.1-9-1(a), which, affords taxpayers a general right to file a claim for refund. IC § 6-8.1-9-1(a) in relevant part provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. . . . [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

- (1) The due date of the return.
- (2) The date of payment.

Taxpayers' refund claims were the result of excess withholding payments made during the tax years at issue. The returns were due on a date later than those withholding payments, thus the three years should be measured from the due date of the return for all three years at issue.

A. Tax Year 2010

Indiana individual income tax returns for tax year 2010 were due on April 18, 2011. Taxpayers' fire occurred on May 23, 2011. Conceivably, Taxpayers could have timely filed their 2010 return because the due date for the return occurred *before* the fire. However, because their 2010 return resulted in a refund, Taxpayers had three years from the original due date of the return to file it. IC § 6-8.1-9-1. Thus, Taxpayers' 2010 return was due no later than April 18, 2014. Taxpayers, however, did not file their 2010 return until November 16, 2017. This is three years and seven months after the time allotted under IC § 6-8.1-9-1, six years and 7 months after the original due date and six years and six months after the fire.

Taxpayers claim that they moved back into their home before September of 2012, which gave Taxpayers at least a year and a half to gather and replace documents that were lost in the fire. According to Taxpayers it took several months to "gather enough copies of the major documents to be able to file [our] federal and state income tax returns . . . [and we] had to file [our] federal returns before filing [our] state returns, which caused further delays." The Department has verified that the fire did occur and it is not unsympathetic to the Taxpayers' situation, however, Taxpayers were not without options. IC § 6-8.1-6-1, as in effect for the tax years at issue. Reads as follows:

- (a) If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety percent (90%) of the tax that is reasonably expected to be due on the due date. When the department receives the petition and the payment, the department shall grant the person a sixty (60) day extension.
- (b) If a person responsible for filing a tax return has received an extension of the due date and is still unable to file the return by the extended due date, he may petition the department for another extension. The person must include in the petition a statement of the reasons for his inability to file the return by the due date. If the department finds that the person's petition is proper and that the person has good cause for requesting the extension, the department may extend the person's due date for any period that the department deems reasonable under the circumstances. The department may allow additional, successive extensions if the person properly petitions for the extension before the end of his current extension period.

Therefore, Taxpayers could have applied for an extension of the filing due date for their 2010 tax return, but failed to do so. Given this failure to request an extension and the significant tardiness of the filing renders the

Department unable to sustain Taxpayers' request for refund for tax year 2010.

B. Tax Year 2011

Indiana individual income tax returns for tax year 2011 were due on April 17, 2012. However, because their 2011 return resulted in a refund, Taxpayers had three years from the original due date of the return to file it. IC § 6-8.1-9-1. Thus, Taxpayers' 2011 return was due no later than April 17, 2015. Taxpayers, however, did not file their 2011 return until November 16, 2017. This is two years and seven months after the time allotted under IC § 6-8.1-9-1, five years and 7 months after the original due date and six years and six months after the fire.

Taxpayers moved back into their home before September of 2012, which gave Taxpayers at least two and a half years to gather and replace documents that were lost in the fire pertaining to 2011. Although finding and replacing tax documents proved to be a lengthy process for Taxpayers, they were not without their options, as noted above. Because Taxpayers did not avail themselves of their options and given the significant amount of time between the fire and the actual date of filing, the Department is unable to sustain Taxpayers' request for refund for tax year 2011.

C. Tax Year 2012

Indiana individual income tax returns for tax year 2012 were due on April 15, 2013. However, because their 2012 return resulted in a refund, Taxpayers had three years from the original due date of the return to file it. IC § 6-8.1-9-1. Thus, Taxpayers' 2012 return was due no later than April 15, 2016. Taxpayers, however, did not file their 2012 return until November 16, 2017. This is one year and seven months after the time allotted under IC § 6-8.1-9-1, four years and 7 months after the original due date and six years and six months after the fire. If Taxpayers moved back into their home before September of 2012, they had at least three and a half years in which to gather and replace documents lost in the fire pertaining to 2012. Again, because Taxpayers did not file extension requests for 2012 and given the ample amount of time available to Taxpayers to prepare their 2012 return, the Department is unable to sustain Taxpayers' request for refund for tax year 2012.

FINDING

Taxpayers' refund requests for tax years 2010, 2011, and 2012 are denied.

II. Individual Income Tax - Imposition.

DISCUSSION

Taxpayers' 2014 Indiana income tax return, as filed, shows a tax due amount of approximately \$200. In February of 2018, the Department issued Taxpayers an assessment in relation to their 2014 return, stating that Taxpayers actually owed the Department an amount closer to \$1,000. According to the assessment notice, the increase is due to unverifiable withholding credits claimed on Taxpayers' return.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, a taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dept. of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); see also *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dept. of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). Taxpayer withholdings are allowed as a credit to taxpayers against this tax. IC § 6-3-3-1. In the case at hand, the Department was unable to verify a portion of the amount Taxpayers' claimed as withholding credits on their 2014 return, thus the return was adjusted and Taxpayers' tax liability increased. It appears that a missing Form W-2 ("W-2") is what caused the issue here. Taxpayers claim that both they and their attorney have attempted to obtain a copy of the missing W-2, but with no success. On more than one occasion, Taxpayers asked the Department to attempt to obtain the missing W-2 from Taxpayer husband's employer. The Department declines this invitation as

"[t]he burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(c).

Without alternative evidence proving the withholding credits reported by Taxpayers are correct, the Department must deny Taxpayers' protest.

FINDING

Taxpayers' protest is denied.

III. Tax Administration - Negligence Penalty.

DISCUSSION

In addition to assessing Taxpayers additional base tax for tax year 2014, the Department imposed a ten percent negligence penalty on the base tax. Taxpayers request that the Department abate the penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department[.]

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In the instant case, Taxpayers' assessment arose from a missing W-2, which was lost in a fire. Despite documented attempts by both the Taxpayers, and Taxpayers' attorney, they have been unable to obtain a copy of

the W-2 from Taxpayer husband's employer. The Department finds that Taxpayers did not act negligently and therefore waive the penalty.

FINDING

Taxpayers' protest of the negligence penalty is granted.

IV. Tax Administration - Interest.

DISCUSSION

Taxpayers protest the imposition of interest. Under IC § 6-8.1-10-1, "[i]f a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment." The Department cannot waive this interest under IC § 6-8.1-10-1(e) because it is statutorily required. Therefore, Taxpayers' protest of interest is denied.

FINDING

Taxpayers' protest of interest is denied.

SUMMARY

Taxpayers' request for refund for tax periods 2010, 2011, and 2012 are denied as the requests were untimely. Further, Taxpayers' request that the proposed assessment of additional base tax and related interest for tax year 2014 be abated is denied. However, Taxpayers' request that the negligence penalty be abated is granted as the assessment was not a result of Taxpayers' negligence.

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